

Truro Planning Board
Minutes of meeting 9 January 2007 – Truro Public Library

Members present: Nicholas Brown, Ansel Chaplin, William Golden, Deborah Paine, Karen Snow, Robert Weinstein, William Worthington (chair)

Others attending: approximately 25 individuals including Charleen Greenhalgh (Assistant Town Administrator/Planner), Sharon Sullivan (Secretary), John Cabral, Richard Lavin, Chet Lay, Michael Mehrmann, Lester J. Murphy, Charles Orr, John Rice, David Reid, Ron Robin, Albert Silva, Henry Yurek, Benjamin Zehnder

William Worthington called the meeting to order at 7:00 pm.

1. Minutes

Mr. Chaplin moved that the minutes of the meeting on 12 December 2006 be accepted as submitted; Mr. Brown seconded. Vote: 6-0-1 with Ms. Snow abstaining.

The minutes of the joint meeting with the Board of Selectmen on 19 December were reviewed, with Mr. Chaplin making two corrections. Mr. Chaplin moved that the minutes of the meeting on 19 December 2006 be approved as amended; Ms. Snow seconded. Vote: 5-0-2 with Mr. Brown and Ms. Paine abstaining as they were not in attendance.

2. 2006-015 Juliana Britt, 2 Lot Definitive Subdivision, 6 Nelson Dr. and 31 Sylvan Lane -
Representatives: Chet Lay, Slade Associates; Lester J. Murphy, attorney for the applicant

Mr. Chaplin stepped down from the meeting at this point. Mr. Lay distributed the plans and reviewed actions thus far on the proposal to create a two-lot definitive subdivision, including approval of the Master Well/Septic Plan by the Board of Health on 19 December, and requested a waiver of complete topographical plan and plan and profile plan. He stated that there is no intent to infringe on the rights of property owners on Sylvan Lane. Mr. Murphy stated that the property owner has the legal right to use Sylvan Lane as an access way but that title rights are not within the purview of the Planning Board. Mr. Worthington then asked Planning Board members for questions and comments.

Mr. Weinstein asked if it was permissible for him to participate, as he was not a member of the Planning Board at the time of the initial presentation and discussion; Mr. Worthington answered in the affirmative. Ms. Paine expressed her opinion that some topographical information on the plan would have been helpful, and Miss Snow stated the need to have the same requirements for this plan as for others. Mr. Lay agreed to add the topography of the road to the plan.

Mrs. Greenhalgh distributed two letters from abutters to members of the Planning Board. She stated that a plan and profile for the road should be provided, and at the very least, the topography within the road right-of-way should be provided. She also indicated that the applicant needs to file a Massachusetts Endangered Species Act (MESA) application and that action on that application is needed before the Planning Board can endorse the project.

Michael Mehrmann, attorney representing the abutters, expressed his complete disagreement with the statement that right of access is not within the purview of the Planning Board and stated that he had handled a similar case in Plymouth before the Appeals Court. He then distributed to the Planning Board a set of documents related to that case and reviewed the history of property ownership and easements, or lack thereof, for the proposal under consideration by the Board.

Mr. Worthington entered into the record the two letters from abutters, one from Natalie Mariano and Shelley Fenily, the other from Robert and Christine Wells, with Mrs. Greenhalgh noting that both are in opposition to the proposal. She also reminded the Board that there is no need to rush

into action on the proposal as they have 135 days from the filing of the application to act, i.e. until 4 April. Mr. Murphy stated his position that the Planning Board cannot make a determination on access as that matter is not within its authority and is for the courts to decide. Mr. Mehrmann asked how the Planning Board can act on an application without determining whether the applicant has right of access.

Mr. Lay requested a continuation of the Public Hearing until 27 February 2007. At this point Henry Yurek, an abutter, asked a question about the width of the road. Mr. Brown moved continuation until 27 February so that the applicant can provide a plan and profile and topography; Ms. Snow seconded. Vote: 6-0-0.

3. John Rice, Preliminary Site Plan Review, 6 Professional Heights Road -

Representative: Lester J. Murphy, attorney for the applicant; John Cabral, Felco, Inc.

Mr. Brown stepped down at this point and Mr. Chaplin rejoined the meeting. Mrs. Greenhalgh distributed to Planning Board members a letter from the Building Commissioner related to the application by Mr. Rice. Mr. Cabral distributed an updated plan showing the entire site.

Mr. Murphy reviewed activities since the last preliminary site plan review at the Planning Board meeting on 12 December 2006. He noted the site visit on 29 December 2006 at which two members of the Planning Board and Mrs. Greenhalgh were present and during which Mr. Rice had a truck unload gravel, which he stated would be the loudest activity to occur at the site. He also noted that the Mass. Department of Public Works is still reviewing the drainage issue, with approval expected once this issue is resolved, and that access to the site via a curb cut on Route 6 will require more clearing and grading in a southeasterly direction. Access via Route 6 is not Mr. Rice's preference, but the Building Commissioner has decided that this is appropriate, meaning that there will likely be more audible noise from Route 6, leading them to seek information on some type of sound barrier. Their hope is to file a definitive plan within the next one to two months. Mr. Worthington then asked members of the Planning Board for questions and comments.

Mr. Golden requested and received clarification on the additional clearing and grading. Mr. Chaplin asked for the State's guidelines for approval of a curb cut, and Mr. Cabral agreed to provide them. In response to a question from Mr. Chaplin on the width of the trucks, Mr. Rice responded that the trucks are 8-10 feet wide on a road that is 24 feet wide, thus allowing two trucks to pass each other in opposite directions.

Ms. Paine asked that the size of the storage bins be included in the plan, and Mr. Worthington requested that the possible area to be expanded be staked out for the next site visit. Ms. Paine expressed the strong need for another site visit at which all Planning Board members can be present as well as abutters, noting that seeing things on a site visit is very different from seeing them on a plan.

Ms. Snow stated the need to show Professional Heights Road on the plan, but Mr. Murphy questioned this as the use of Professional Heights Road by the applicant will be discontinued. He did agree to provide a plan of the subdivision including that street. Mr. Chaplin asked if there is data on traffic flow, indicating that it is an open question whether a traffic study is needed. Mr. Golden then raised the issue of accelerating traffic entering Route 6 from Highland Road as trucks are also entering Route 6. Mr. Weinstein asked about mitigation for drainage on the downhill side of the property. Discussion ensued on Ms. Snow's opinion that the plan needs to specifically state that Professional Heights Road will not be used for commercial purposes and the need for Mr. Rice to access his property by vehicle for a variety of reasons.

Mr. Worthington then asked for questions and comments from the public in attendance. David Reid, attorney representing the seven households abutting the applicant's property, asked if there

would be another public hearing on the preliminary site plan, to which Mr. Worthington responded affirmatively after ascertaining from members that the Planning Board is not ready to close the preliminary site plan review. Mr. Reid then enumerated a number of issues for the Planning Board to consider, acknowledging that some had already been raised by questions from the Board: lighting needs to be shown on the plan; the traffic log kept during the holidays is helpful but not sufficient; what will be the use of the two driveways if the curb cut is approved; information on the nature of activities to occur on the property is needed to assess implications for zoning. Mr. Murphy stated that he would ask Mr. Rice to continue the traffic log. Mr. Chaplin requested and received clarification regarding the 44-foot frontage shown on the plan and the curb cut.

Each of the waivers requested by the applicant was reviewed and discussed with the Planning Board's action noted:

8. Storm drainage – no waiver needed
11. Parking/Walkways – no waiver needed
12. Wetlands – waiver granted
13. Walls and Signs – no waiver needed
16. Landscaping Plan – no waiver needed
17. Refuse Areas – no waiver needed
19. Drainage Basin Study – Mr. Chaplin stated his position that the Planning Board should defer action; Mrs. Greenhalgh offered clarification; waiver granted
20. Traffic Impact Study – Mr. Murphy stated that use would be sporadic, by Mr. Rice and his employees only (i.e. no customer use). Mr. Worthington remarked that the State is better able to perform a traffic study and will do so as part of the curb cut review, recommending a waiver be granted. Mr. Chaplin urged the Board to defer action, and Mrs. Greenhalgh agreed. Action deferred.
21. Commonwealth Review – no waiver needed
22. Utilities – no waiver needed
23. Fiscal Impact – waiver granted
25. Project Estimates – waiver not granted.

Ms. Paine suggested that some mitigation for landscaping and drainage be incorporated into the plan. The date for the next site visit was discussed with agreement to meet at 6 Professional Heights Road on Friday, 26 January 2007 at 9 am; abutters are welcome to attend and are encouraged to do so. Mr. Murphy asked if the next preliminary site plan review could occur at the same time; it was agreed that it could, and Mrs. Greenhalgh will post this site visit as a public meeting.

4. Goodheart Properties III, LLC, Preliminary Site Plan Review, 29 Outermost Road -

Representative: Benjamin Zehnder, attorney for the applicant; Richard Lavin and Charles Orr. Mr. Brown and Mr. Weinstein recused themselves at this point and left the meeting. Mrs. Greenhalgh distributed relevant documents to members of the Planning Board; Mr. Worthington distributed to Planning Board members copies of a letter from Mr. Weinstein to George Price, Superintendent of the Cape Cod National Seashore. Mr. Zehnder asked that the memo submitted regarding a conflict of interest on the part of Mr. Weinstein be entered into the record. He also asked whether any member of the Planning Board had independent substantive communication with Mr. Weinstein regarding this application. Two members responded that they had received a copy of Mr. Weinstein's letter to Mr. Price, as had Mr. Worthington, but that no other communication had occurred.

Mr. Zehnder introduced Charles Orr, Architect for the project. Mr. Orr then introduced Richard Lavin, owner of the property concerned in the application, and reminded the Board that he and Mr. Lavin had appeared before the Board previously regarding a project on Prince Valley Road.

Mr. Orr reviewed the current project proposal to replace an existing two-story dwelling close to the bluff with a single-story living space raised above ground level and located further from the coastal bank, and to construct an observation deck on the site of the original dwelling. Mr. Lavin stated that the objective is to build a modest size home with 2150 square feet of living space in a structure totaling 2400 square feet. Mr. Zehnder added that the home would have three bedrooms and two baths.

Ms. Paine stated that she had visited the site and asked how far the front of the observation deck is from the pin marking the top of the bank. Mr. Zehnder responded by indicating the place in the plan where that measurement is specified and that it is 26 feet. Ms. Paine expressed concern regarding the timing of the removal of the foundation of the old house and that its removal could leave an already scoured area very vulnerable, stating that this area needs to be maintained and stabilized during construction of the observation deck. Mr. Lavin and Mr. Orr responded that they have considered leaving the existing foundation in place and working it into the new construction, a strategy that Board members encouraged. Mrs. Greenhalgh noted that the Conservation Commission would address these issues in their review. Mr. Worthington asked if an application has been filed with MESA, and Mr. Lavin responded that this has been handled by a consultant he has hired.

Ms. Paine inquired about the width of the path from the planned house to the observation deck, which is 5 feet. Ms. Paine and Ms. Snow asked several questions about lighting that will be installed, and Mr. Orr and Mr. Lavin responded that a schematic of the lighting would be provided in the next version of the plan. At this point Mrs. Greenhalgh pointed out that all reviews by other groups need to be concluded before the Planning Board completes its final site plan review. Ms. Paine then asked several questions regarding construction of the path and power supply, to which Mr. Lavin responded that wires are to be trenched and that while the existing transformer will be replaced, no additional power is needed.

Mr. Chaplin remarked that he found the letter from George Price very persuasive and that it indicates that the zoning by-laws will not allow the project. Mr. Zehnder responded that the project is a fully permitted use and the structure fully conforming. Mr. Chaplin expressed his disagreement with the interpretation of Messrs. Zehnder and Lavin, at which point Mr. Zehnder spoke to the difference between National Seashore law and the Truro zoning code. All parties agreed that it is an issue for Town Counsel to determine.

Mrs. Greenhalgh referred to her memo of 2 January 2007 to the Planning Board on this issue, and stated that the need to refer it to Town Counsel need not delay action by the Planning Board on the preliminary site plan. Ms. Paine moved that Mrs. Greenhalgh be asked to send a letter to Town Counsel posing the questions included in her memo; Ms. Snow seconded. Mr. Chaplin stated that he was not comfortable with this, and Mr. Zehnder asked for clarification on what questions will be asked. The questions as presented in Mrs. Greenhalgh's memo will be sent to Town Counsel. Vote: 4-0-1 with Mr. Chaplin abstaining.

Each of the waivers requested was then discussed with action by the Planning Board indicated:

8. Storm Drainage – waiver granted
13. Walls and Signs – no waiver needed
15. Outdoor Storage/Display Area – waiver granted
16. Landscaping Plan – waiver granted, with Ms. Paine iterating the need to mitigate disturbance and replant the area around construction of the path.
17. Refuse Areas – waiver not granted; plan needs to show an enclosed refuse area to prevent wind from carrying trash containers and contents.
19. Drainage Basin Study – waiver granted
20. Traffic Impact Study – waiver granted
23. Fiscal Impact – waiver granted
24. Community Impact – waiver granted.

Mr. Worthington asked a question about the future of the existing road to which Messrs. Zehnder and Lavin responded with reference to the plan, indicating that it will no longer be used when the project is completed.

Ms. Paine moved to accept the preliminary site plan as submitted; Ms. Snow seconded. Mr. Chaplin asked wasn't it necessary to wait for the response of Town Counsel, and Mrs. Greenhalgh responded that it was not necessary to wait as the motion is simply to accept the preliminary site plan. Vote: 5-1-0 with Mr. Chaplin voting no.

5. Albert Silva, Topmast Motel Complex, Preliminary Site Plan, 209-217 Shore Road –
Representatives: Albert Silva; John Cabral, Felco, Inc.

Mr. Brown and Mr. Weinstein rejoined the meeting. Mr. Silva reviewed the proposal stating that his plan is to make the motel a full-service resort, with construction of a pool building and a full-service court as the first steps. He noted that he had learned from Mrs. Greenhalgh that the change in zoning to residential makes the building non-conforming and will require an application to the Zoning Board of Appeals. He also noted a change from the plan as submitted regarding the distance between lighting, revising it from 50' to 35' spacing. Mr. Silva then explained that his original intent had been to limit use of the pool building to motel guests only, but that inquiries from townspeople had prompted him to change his plan and to make the pool available to the public but only in the off-season when the motel is closed.

Ms. Snow posed questions about the length of the wall and the fence around the court to which Mr. Silva responded that the wall is 385 feet and the fence will be chain-link. Mr. Chaplin expressed concern about the adequacy of parking during the months of public use; Mr. Silva responded by indicating the various locations of spaces which will provide ample parking. Mr. Cabral added that the pool accommodates 42 people, another indication that parking is ample. Ms. Paine applauded Mr. Silva's considering opening the pool to the public, indicating it would be a great thing for the town. Mr. Cabral added that as the building will require approval by the Zoning Board of Appeals, any support is appreciated.

Each of the waivers requested was reviewed with the action of the Planning Board indicated:

19. Drainage Basin Study – waiver granted
20. Traffic Impact Study – waiver granted
21. Commonwealth Review – waiver granted; Mass. Department of Transportation will conduct a review
23. Fiscal Impact – waiver granted
24. Community Impact – waiver granted
25. Project Estimated – waiver granted.

Ms. Snow stated that since a landscaping waiver is not requested she expects that the final plan will show how the 385-foot wall will be addressed, perhaps with a berm as well as landscaping. Mr. Silva indicated that landscaping is planned and that he will include it in the next version of the plan. Ms. Paine and Ms. Snow asked questions about lighting, specifically whether the court will be lighted, and Mr. Brown asked about hours of operation. Mr. Silva responded that there will be no lighting of the court and that summer hours of operation will likely be 9 am to 10 pm but that off-season hours have not yet been determined. In response to a question from Ms. Snow as to the dimensions of the pool, Mr. Cabral indicated that it is 16' x 50'.

Ms. Snow moved acceptance of the preliminary site plan; Mr. Brown seconded. Vote: 7-0-0.

6. Ron Robin, Consultation with the Board, Radio Tower, 352 Route 6

Mr. Chaplin stepped down from the meeting at this time. Mrs. Greenhalgh distributed a copy of §40.5 of the zoning by-law that lists what documents need to be filed regarding the project. Mr. Robin reviewed the history of the proposal to erect a 35-foot pole to accommodate an FM

broadcast antenna and distributed relevant documents. He stated that various options have been explored and that he believes there is the opportunity to place the pole and antenna on the Tri-S property, indicating that the structure is a utility pole, not a tower. It will be used for a community FM radio station that will broadcast from Orleans to Provincetown. Stating that there are many regulations from many agencies that must be followed, he asked if the structure could be considered a utility pole rather than a tower.

Mr. Brown stated that he is favorably disposed to consider it a pole but that a complete application is essential, which has not been filed with previous applications. Mr. Worthington emphasized the need of the Planning Board to have all the documents in Mrs. Greenhalgh's list. Mrs. Greenhalgh stated that a 1 to 2-page narrative and a site plan showing the location of the pole would be sufficient. Ms. Paine asked about item "L" on the list and it was determined it is not needed. She also asked if a description of rejected sites was needed, and Mrs. Greenhalgh responded that it could be included in the narrative. Mr. Brown asked about the time frame, and Mr. Robin responded that he would be ready to present the plan at the next available meeting. Mrs. Greenhalgh stated that presentation of the plan could occur on either 13 or 27 February, depending on when the application was filed.

7. Affordable Housing By-law

Mr. Chaplin returned to the meeting. Mrs. Greenhalgh informed the Board that wording related to Chapter 59 (taxes) needs to be referred to Town Counsel for review as soon as possible in order to be finalized for the Town Warrant, and that the draft can be reviewed at the meeting on 23 January as nothing else has been scheduled for that meeting. Ms. Snow moved that the necessary material be sent to Town Counsel; Ms. Paine seconded. Vote: 7-0-0.

8. John Thornley, Thornley Meadow Road

Chet Ley has requested that the Board inspect the road for adequacy of access for an ANR plan. Mr. Brown stated that there might be covenant issues that need to be resolved regarding this application and asked for copies of those covenants. Mrs. Greenhalgh will review the case file.

Ms. Snow moved for adjournment; Mr. Golden seconded. Vote: 7-0-0.

The meeting adjourned at 10 pm.

Respectfully submitted,

Sharon A. Sullivan
Secretary